

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

THE HIPSAVER COMPANY, INC.,)	
)	Civil Action No. 05-10917 PBS
Plaintiff,)	
)	
v.)	
)	
J.T. POSEY COMPANY,)	
)	
Defendant.)	

DECLARATION OF VICTORIA GAY LEWIS
IN SUPPORT OF MOTION OF
DEFENDANT J.T. POSEY COMPANY FOR ORDER
TRANSFERRING VENUE TO CENTRAL DISTRICT OF CALIFORNIA

I, Victoria Gay Lewis, declare:

1. I am a Product Manager for J.T. Posey Company ("Posey"). I have held this position at Posey since April 1999. As Product Manager, I am responsible for products that Posey categorizes as "Care Alternatives". This includes Fall Management and Fall Prevention products such as Hipsters, Floor Cushions, Fall Monitors and Sensors. The facts recited in this declaration are within my personal knowledge and, if called as a witness and sworn, I could and would testify thereto from my own personal knowledge, except as where stated on information and belief and, as to those facts, I believe them to be true. I make this declaration in support of Posey's motion to transfer venue of the within matter to the U.S. District Court for the Central District of California, Western Division.

2. Posey's principal place of business is located in Arcadia, in the County of Los Angeles, in California. The company is a well-respected supplier of various products used in the healthcare industry. Within the last five years, Posey has introduced a line of hip protectors, that is, products that are designed to help prevent hip fractures in elderly persons caused by falls. The company is family-owned and operated.

3. The HipSaver Company Inc. ("HipSaver") is one of Posey's competitors.

4. My responsibilities at Posey include, among other things, the development and introduction of new products, the evaluation and implementation of product enhancements, and assistance in support, management and promotion of existing products.

5. In 2001, Posey engaged a laboratory, Garwood Laboratories, Inc. ("Garwood"), to assist it in identifying an effective cushioning material that was to be inserted into a hip protector product known as the "Hipster" that Posey was manufacturing. The Hipster is designed to protect the hips of elderly patients and to reduce the likelihood of a hip fracture in the event of a fall. I was personally involved in that project.

6. The other people who worked on the hip protector project in 2001 were: (i) Jeff Yates, who was Posey's Director of Marketing and my direct superior, but who is no longer employed by Posey, (ii) Charles Kline, who was, and still is, a Posey engineer, (iii) Leanne Powers, who was Posey's marketing and communications manager, but who is no longer employed by Posey (and presently lives in Burbank), (iv) Lee Rash, who was Posey's manager of new product development in 2001 and who is presently its director of materials; (v) Ernie Posey, who is presently Posey's president; (vi) Tim Sturkie, a former Garwood employee who was involved in the development of the test protocol that was to be used on the materials that Posey wanted tested; (viii) Dominic Hunter, the Garwood technician who actually performed the testing that is the subject of the project, (ix) Rick

Clemons, who I am informed wrote the test report for Garwood, and (x) William Flower, who I am informed was Garwood's quality control manager.

7. The choice of Garwood as the testing lab for the prospective Hipster cushioning material was made by Lee Rash.

8. In connection with the hip protector project, Posey provided Garwood with various foam materials. A test protocol was developed, the testing was performed and the results then reported to Posey in writing. I personally observed some of the testing and, even though Garwood was recording the results of the tests, I also tabulated some of the raw data.

9. After Garwood completed the testing, it prepared a report for Posey and Posey created and disseminated various advertising materials that made reference to the testing and the test results (which I shall refer to as the "Impact Study"). The first ad was developed by Jeff Yates and Leanne Powers, neither of whom is still with Posey. Shortly after the first ad was produced, Jeff Yates left Posey. So later ads were developed by Leanne Powers. However, I had conversations with Jeff Yates and Leanne Powers regarding these ads as they were being produced and before they received final approval by Ernie Posey. The development of the ads occurred in California.

10. As I said above, the ads that were developed and disseminated in 2002 and 2003 made reference to the Impact Study. For example, one of them stated that "[a]n independent laboratory study was conducted to determine the most effective impact absorbing material . . ." One or more of them also stated that the testing was conducted by Garwood and that the data from the Impact Study was on file at Posey's offices. All of them also contained a bar chart that was intended to graphically illustrate the force of a fall on various surfaces, and the amount by which a Posey hip protector could reduce the force of a fall on concrete. True and correct copies of three such advertisements are attached to the declaration I submitted in support of Posey's motion to dismiss.

11. Both Posey and Garwood are physically located in Los Angeles County. Posey maintains its records and documents in Los Angeles County. Moreover, Los Angeles County is where the physical testing that is the subject of Posey's accused advertising took place and that is also where the equipment that Garwood used to do the testing is located.

12. Posey does not maintain a place of business in Massachusetts. Nor does it maintain any documents there, as far as I am aware.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct and that this declaration was executed this 17th day of June, 2005 at Arcadia, California.

/s/ Victoria Gay Lewis
Victoria Gay Lewis